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TAGS: [UNSC](#) [PREL](#) [PHUM](#) [PHSA](#) [EWWT](#) [KCRM](#) [SO](#) [XA](#) [XW](#)
SUBJECT: SOMALIA-- DRAFT ELEMENTS FOR POSSIBLE UNSCR ON
SOMALIA PIRACY

REFS: (A) LONDON 626
(B) PARIS 362
(C) STATE 18101

Classified By: IO PDAS James B. Warlick, for reasons 1.4
(b) and (d).

¶1. (SBU) This is an action request for USUN, Embassy
London, Paris, and Panama City. See paragraphs 2 and 3.

¶2. USUN is instructed to provide to its British, French
and Panamanian counterparts draft elements of a UN
Security Council Resolution (paragraph 12) to combat
piracy off the Somali coast. USUN may draw on the
background and talking points in paragraphs 4 through 11
in its consultations. USUN should inform the British that
the Panamanians have indicated to us that they may be
prepared to take the lead on the anti-piracy resolution.
Given the UK's traditional leadership on Somalia issues in
the Council, USUN should determine if this is acceptable
to them.

¶3. Embassies London, Paris and Panama City may also draw
from the following to respond to concerns expressed in
Refs A and B and to Panamanian interest in the topic
expressed during UN Security Council consultations in
Panama City with IO PDAS Jim Warlick.

Background

¶4. (U) Over the last few years there has been a sharp
increase in incidents of piracy off the Somali coast.
According to the International Chamber of Commerce's (ICC)
International Maritime Bureau (IMB) acts of piracy off the
Somali coast increased from 2 in 2004 to 31 in 2007 (only
10 in 2006). The Transitional Federal Government (TFG)
does not have the capacity to protect vessels off its
coasts or to interdict pirates and perpetrators of vessel
hijackings in Somali territorial waters. On October 20,
2007, the TFG provided the United States Government with a
letter granting it permission to enter Somali territorial
waters to protect shipping lanes and interdict
pirates. The TFG provided similar authorizations to other
countries. The United States and its partners in the
Combined Task Force (CTF)-150 operating in the area have
responded to distress calls sent out from commercial
and fishing vessels when attacked by pirates off the coast
of Somalia. The French and other EU nations have also
provided naval escorts for World Food Program vessels
carrying humanitarian supplies to Somalia.

¶5. (SBU) The United States believes, however, that more
needs to be done to address the problem of piracy off the

Somali coast. On February 22, the Department sent an ALDAC demarche request (Ref C) asking posts to approach host governments to determine if they were interested in helping on the issue, what they could do, and what they would need in terms of authorization from the UNSC. The overwhelming majority of responses received to date were positive. Most governments would like to see the international community do more to stop piracy off the Somali coast; however, most do not have the capacity to help in the efforts themselves. Many noted that any international efforts must be in line with international law and with the permission of the TFG. On February 27, the Somalia Permanent Mission to the United Nations in New York wrote to the President of the Security Council requesting the "urgent assistance of the Security Council in securing the international and territorial waters off the coast of Somalia for the safe conduct of shipping and navigation."

¶6. (SBU) Some states view a request for assistance from the TFG as sufficient legal basis to conduct operations in Somali territorial waters. However, given the TFG's temporary nature and its lack of recognition among some nations, other states believe further international legal authority is required to conduct operations in Somali territorial waters. To address such concerns and permit more states to participate in counter-piracy efforts, a resolution under Chapter VII of the UN Charter could authorize states to enter Somali waters to act to repress piracy and armed robbery at sea.

¶7. (SBU) In April 2008, the International Maritime Organization (IMO) will sponsor an East Africa, Southwest Indian Ocean regional conference on piracy, in Dar es Salaam, Tanzania. The purpose of the conference is for interested countries to produce an agreement to address piracy in the region. Moreover, UN members we have approached to date have indicated varying degrees of agreement that the UN needs to pave the way for an international response to address this problem. Absent from these efforts, however, is any apparent activity or recognition of the problem by the African Union (AU). Parallel with these international and regional efforts, therefore, we believe the P3 and others should urge the AU to take up the issue with a view to adopting its own resolution acknowledging the problems to push other states to provide disposition and calling for international logistics assistance to deal with persons under control (PUCs), including victims, witnesses and suspected pirates, obtained during counter-piracy operations.

UNSC Strategy

¶8. (C) The responses to the February 22 demarche (Ref C) may be useful in helping to develop a strategy for securing UNSC support for a Chapter VII resolution. Per Ref A, the UK raised several substantive concerns about a UNSC resolution, including: (1) whether a resolution was needed at all, or whether states interested in helping could reach bilateral agreements with the TFG to authorize their operations in Somali waters; (2) what naval assets would do in Somali waters; and (3) the legal grounds for the envisioned operations and the applicable rules of engagement. Although, the French supported the UNSC resolution in principle (Ref B), they also saw a need for clearly establishing the legal basis for any resulting operation and the responsibilities of, and limitations placed on, participating countries. Further, France feared a UNSC resolution could hamper the program it initiated last November to protect WFP ships.

¶9. (C) Other key responses to Ref C included:

UNSC MEMBERS

-- China would "respond positively" if the TFG requested assistance, noting that China has fallen victim to Somali

pirates;

-- Indonesia stated that it takes the issue very seriously and would consult with its mission in New York (Note the ICC-IMB states that Indonesia led the world in piracy attacks occurring in its waters in 2007 with 43 attacks);

-- Burkina Faso said it would welcome discussion of the issue;

-- Vietnam said any anti-piracy resolutions should be conducted in accordance with international law and with respect for the TFG's territorial sovereignty, but it would work with the United States on the issue in a positive and constructive way;

-- Panama indicated interest in a resolution in discussions in New York and told IO PDAS during consultations in Panama City that they would consider taking the lead on the issue;

OTHERS

-- Spain was very interested in a resolution and said it would be willing to help demarche UNSC members if necessary;

-- Uganda was supportive, arguing that the piracy issue was fueling the illegal arms trade and endangering their peacekeepers in Somalia;

-- Djibouti and Yemen were interested in the resolution due to their proximity to Somalia; and

-- Korea expressed concerns to the Department about piracy in Somali waters.

TALKING POINTS

110. (U) USUN and posts may draw from the following talking points when consulting with their British, French, and Panamanian interlocutors. USUN may also want to share these points with the Panamanian mission so they know how to respond to British and French objections.

BEGIN POINTS:

-- The United States remains deeply concerned about acts of piracy and armed robbery occurring in territorial and international waters off the Somali coast. Incidents of piracy and armed robbery have increased dramatically over the last few years. The IMO reports that in 2007, there were 102 incidents of piracy off East Africa and in the Indian Ocean. The International Chamber of Commerce's International Maritime Bureau states that 31 acts of piracy occurred off the Somali coast in 2007. Flag states of affected vessels included Panama, China, Japan, Korea, Denmark and others. No commercial vessel operating near the Somali Coast is safe from these acts.

-- Waters off the coasts of Somalia are some of the most heavily trafficked seas in the world. The pirates and hijackers pose an increasing threat to safety of life at sea, international trade and navigation.

-- The TFG does not have the capacity to protect naval vessels in its territorial waters and on February 27 submitted a letter to the UNSC requesting assistance in combating the pirates.

-- In their recent Assembly, the International Maritime Organization (IMO) passed a resolution urging the Security Council to address the problem. On July 5, IMO Secretary General Mitropoulos wrote the UN Secretary General stressing the need for a Security Council resolution to address the

issue of piracy and armed robbery off the coast of Somalia.

-- In parallel with efforts at the UN and the efforts of the IMO to establish a regional agreement to address the problem, we believe the African Union (AU) needs to be prompted to take up this issue as well.

-- We would be interested to hear your thoughts with respect to getting the AU involved. We understand the AU has little or nothing to offer from an operational perspective, but the possibility of it adopting its own resolution calling for assistance with Somalia piracy strikes us as both useful and reasonable.

-- We do not know how many nations would be willing to come forward immediately if a UNSC resolution were adopted. However, some of our partners in the Combined Task Force (CTF)-150, which conducts maritime security operations in the area, have indicated a desire for an authorization in a UNSC resolution to act in Somali territorial waters to protect shipping and interdict maritime criminals. The CTF-150 comprises naval units from many coalition nations, including, the UK, France, Germany, Pakistan, and the United States, and has included forces from New Zealand, Italy, Spain, Portugal, Turkey, and Canada. France is currently in command of CTF-150. Canada will assume command in June 2008. Further, the French government has been able to coordinate a coalition of nations to escort vessels carrying humanitarian aid. This resolution would provide additional authority to those nations as well. If those states act, they will need disposition and logistics support from other countries including flag states to accept persons under control (PUCs) such as victims, witnesses and suspected pirates obtained as a result of counter-piracy operations.

-- We share your concerns about clearly establishing the legal basis for the resolution, including establishing responsibilities and limitations to be placed on participating countries. A UNSC resolution also could provide a good predicate for development of Coalition ROE for all CTF-150 units that participate in any operations conducted under the authorization of a UNSC resolution. We understand France and its partners escorting WFP shipments have their own Rules of Engagement that may also be adapted to any operations acting under UNSC authorization. We look forward to working with you to address your concerns on these issues.

-- (For UK) Although it is true that interested parties or coalitions can negotiate bilateral agreements with the TFG, TFG resources and capacities are extremely limited. Further, some states may view an invitation or bilateral agreement with the TFG as an insufficient legal basis to conduct operations in Somali territorial waters, given the TFG's lack of recognition among some nations. A UNSC resolution with Chapter VII authority would provide immediate legal authorization for those interested in helping.

-- (For UK) We very much appreciate your leadership on Somalia and believe the issue of piracy can unify the international community and build support for other programs in Somalia. Panama has indicated to us that they may be prepared to take the lead on the resolution on Somali piracy. As the traditional leader on Somalia-related issues in the Council, would you be willing to hand over the pen to Panama?

-- (For France) We very much appreciate and commend the program to escort WFP ships established by the GOF and subsequently taken up by the Danish and Dutch governments. We do not want to interfere with that program in any way. We see this UNSC resolution as complementing your efforts and perhaps helping to find new partners for your initiatives. We note that France has recently assumed command of CTF-150, the coalition of naval forces which has been conducting counter-piracy

operations in the region.

-- (For Panama) We thank you for your interest and leadership on the issue. Your Foreign Ministry noted that Panama may be prepared to take the lead on a Somali piracy resolution. We think Panama's status as a large flag state country for maritime vessels position it to be well qualified to lead on the issue. We would fully support you on this initiative, if the British agree to relinquish the pen on the issue. We would like to discuss with you further the need for a Chapter VII resolution.

-- (If raised) If asked why we added "while calling on all states, and in particular flag, port and coastal states and states of nationality of victims of piracy, to provide disposition and logistics assistance for persons under control, such as victims, witnesses, and suspected pirates, who are obtained as a result of piracy repression operations." to the Chapter VII paragraph authorizing access to Somali territorial waters. Answer: While we understand that this language would not obligate any state to take action in regard to persons under control, we feel it is extremely important to emphasize the problem posed by them. Without resolving this issue, many states will be reluctant to interdict pirates and/or maritime criminals.

END POINTS.

Reporting Deadline

¶11. (U) USUN is requested to report back initial reports with the British, French, and Panamanians by COB March
¶31. Responses to posts from host governments, if any, would also be appreciated.

Draft UNSCR elements

¶12. (SBU) The following are draft elements for the UNSCR on piracy off the Somali coast:

Preambular elements

- Recall prior Council statements on Somalia;
- Recall IMO statements on piracy off the Somali coast;
- Recall relevant provisions of the Law of the Sea Convention with respect to repression of piracy and armed robbery at sea;
- Take note the letter from the TFG requesting assistance;
- Note with concern incidents of piracy off the Somali coast and their effect on shipping and on humanitarian relief efforts;
- Determine that the continuing incidence of acts of piracy off the Somali coast constitutes a threat to international peace and security;

Operative elements

- Condemn acts of piracy and armed robbery against ships off the Somali coast;
- Urge all states to be vigilant to acts of piracy and armed robbery off the Somali coast;
- Urge all states to cooperate with each other and share information about acts of piracy off the coast of Somalia and to render assistance to vessels at risk of or under attack by pirates, including by escorting vessels en route to Somali ports with cargo of humanitarian aid, and cargo,

at the ships' requests;

-- Call upon all states and interested organizations to provide technical assistance to Somalia and nearby coastal states to enhance the capacity of these states to combat piracy off the Somali coast;

-- Authorize states under Chapter VII [for a period of x months subject to renewal by the Council]:

[Alternative (a): to enter the Somali territorial sea for the purpose of identifying suspected pirates and deterring, preventing, and suppressing acts of piracy and acts of armed robbery at sea, and to take within the Somali territorial sea those actions to identify, deter, prevent, and suppress piracy and acts of armed robbery at sea that states are permitted to take on the high seas under customary international law as reflected in the UN Convention on the Law of the Sea], while calling on all states, and in particular flag, port and coastal states and states of nationality of victims of piracy, to provide disposition and logistics assistance for persons under control, such as victims, witnesses, and suspected pirates, who are obtained as a result of piracy repression operations. [Alternative (b): to enter the Somali territorial sea for the purpose of identifying, deterring, preventing, and suppressing acts of piracy and armed robbery at sea, and to use within the Somali territorial sea all necessary means to identify, deter, prevent, and repress acts of piracy and armed robbery at sea, including but not limited to boarding, searching, and seizing vessels engaged, or suspected of engaging, in acts of piracy or armed robbery, and to apprehend persons engaged in such acts with a view toward their ultimate prosecution, while calling on all states, and in particular flag, port and coastal states and states of nationality of victims of piracy, to provide disposition and logistics assistance for persons under control, such as victims, witnesses, and suspected pirates, who are obtained as a result of piracy repression operations.

-- Urge states with relevant jurisdiction to investigate and prosecute persons responsible for acts of piracy and urge all states to render assistance to such efforts, such as by providing investigative, logistical and disposition assistance;

-- Request states in the exercise of the authority above to coordinate their actions with other participating states and with the TFG;

-- [Request states to provide the SYG information about actions they take in the exercise of the authority above]

-- Request the SYG to report to the Council within x days of developments in connection with the implementation of this resolution and on the situation with respect to piracy off the Somali coast.

END ELEMENTS
RICE